

Programmatic Agreement

among

**The National Oceanic and Atmospheric
Administration,**

The Advisory Council on Historical Preservation,

and

The State of Florida

for

Historical Resource Management

in the

Florida Keys National Marine Sanctuary

NOS Agreement Code: MOA-2003-103

**PROGRAMMATIC AGREEMENT AMONG
THE NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND
THE STATE OF FLORIDA
FOR HISTORICAL RESOURCE MANAGEMENT
IN THE FLORIDA KEYS NATIONAL MARINE SANCTUARY**

The Florida Keys National Marine Sanctuary (Sanctuary) was established to provide comprehensive protection to the marine environment in the Florida Keys and comprehensive management of the use of the Sanctuary and its resources, including historical resources.

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), and in consultation with the State of Florida, developed a comprehensive management plan which facilitates multiple use of the Sanctuary resources consistent with the primary objective of resource protection.

The purpose of this Programmatic Agreement (Agreement) is to define the relative relationship of the State of Florida, as owner of all submerged cultural resources (hereafter "SCRs") (Chapter 267, Florida Statutes) located in State waters, with NOAA, and to jointly develop a policy, as represented by this Agreement, for protection and management of historic resources in the Florida Keys National Marine Sanctuary by the Co-Trustees, the State of Florida and NOAA. The Advisory Council on Historic Preservation (Council) agrees that this a Programmatic Agreement under sections 106 and 110 of the National Historic Preservation Act and implementing regulations.

Management and protection of the historic resources in the Sanctuary shall be administered in accordance with the Florida Keys National Marine Sanctuary & Protection Act (FKNMSPA), the National Marine Sanctuaries Act (NMSA), the Abandoned Shipwreck Act (ASA) and the State regulations guiding archaeological removal of SCRs, provided they do not conflict with the federal archaeological program. Any NOAA management actions taken which are consistent with the procedures in this Agreement satisfy NOAA's Section 106 and 110 responsibilities for all individual federal undertakings affecting the historic resources within the Sanctuary.

I. REFERENCES AND AUTHORITIES

The Sanctuary was established under the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), Public Law No. 101-605, 104 Stat. 3089 (Nov. 16, 1990). Section 5(a) of the FKNMSPA expressly provides that the Florida Keys National Marine Sanctuary be managed under all applicable provisions of the NMSA, as amended, 16 U.S.C. 1431 et seq. NOAA enters this Agreement pursuant to the FKNMSPA and the NMSA.

The Abandoned Shipwreck Act of 1987 (ASA), 43 U.S.C. 2101-2106, transferred title to abandoned shipwrecks on states' submerged lands to the states. Under the ASA, states are to manage the abandoned shipwrecks in a manner which protects natural resources, the shipwreck sites, and allows for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and sites. The State of Florida enters this Agreement pursuant to Chapter 267 of the Florida Statutes, in which title to abandoned historic resources on state-owned or state-owned sovereignty submerged lands is vested in the Division of Historical Resources of the Florida Department of State which is charged with the statutory responsibility of locating, acquiring, protecting, preserving, operating, and interpreting historic resources in order to foster an appreciation of Florida history and culture.

The designation of the Sanctuary does not alter the State of Florida's title and the rights of collection and disposition attendant thereto, to abandoned shipwrecks on State submerged lands. However, in the manner set forth in this agreement, upon designation NOAA and the State share co-trustee responsibilities for natural and historic resources within the State portions of the Sanctuary.

The Abandoned Shipwreck Act Guidelines, 55 Fed. Reg. 50116 (December 4, 1990; ASA Guidelines), provide advice to the states and federal agencies on how to effectively manage abandoned shipwrecks on submerged lands under their ownership or control. The ASA Guidelines provide for private sector participation in shipwreck research projects, and recovery of shipwrecks when such activities are in the public interest.

II. DEFINITIONS

As used in this Agreement the following terms have the meanings stated.

Adverse Effect - an effect on a site listed in or eligible for inclusion in the National Register that may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association, as set forth in 36 CFR Part 800.9, Protection of Historic and Cultural Properties.

Archaeological Recovery - A process of systematic artifact recovery and mapping of shipwreck sites

Artifact - an object made or manipulated by man. Artifacts commonly found at archaeological sites may have one or more of the following qualities:

1. Historic - an object associated with historical events;
2. Aesthetic - a work of art or craft;
3. Religious - iconic, ceremonial;

4. Functional - a tool, utensil, etc.;
5. Modified Commodity;
6. Food Product Used For Subsistence - butchered animal bones, seeds, corn cobs, etc.

Artifact Scatter Pattern - The stratigraphic and horizontal distribution of scattered artifacts, ballast deposits, and ship remains which archaeologically documents the events surrounding the sinking and progressive disintegration of a shallow water shipwreck site.

Commercial Salvage - the search for and recovery of shipwrecks artifacts using archaeological recovery techniques and historical documentation to maximize the intrinsic value of the finds. It is to be distinguished from treasure hunting which involves recovery without regard for archaeological context and historical significance.

Crafted Items - materials made of metals, stones or other materials that have functional, aesthetic, cultural, historical or religious significance or value.

Debris Field - generally referring to the area of artifacts from shipwrecks outside of shallow waters where artifacts are scattered and deposited through: (1) the wrecking or sinking of a vessel; (2) natural occurrences such as currents or storms; (3) salvage activities; and (4) other processes.

Duplicative Artifacts - a group of artifacts that are similar or identical in nature.

Historical - possessing historical, cultural, archaeological, or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

Historical Association - the inter-relationship of discovered objects to one another and to their surrounding environment, and which provide the cultural context of the site.

Historical Interest - capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific and scholarly techniques such as controlled collection, analysis, interpretation and explanation.

Historical Resource or Historic Property - any material remains of human life or activities which are at least 50 years of age, and which are of historical interest.

Identical Artifacts - artifacts made of identical material, of same content and weight, made in the same mold, having the same marks, stamps, designs. They are often manufactured assembly-style with machinery.

In Situ - A Latin term meaning "in the original position."

Material Remains - physical evidence of human habitation, occupation, use or activity, including the site, location or context in which such evidence is situated

Modified Raw Materials - commodities that had been reduced to a concentrated state. Such items indicate cultural activity in the shape, size, markings and content of the artifact. This includes ingots, pigs and bullion.

Primary Archaeological Deposit - a shipwreck artifact assemblage stabilized by in situ ballast, hull structure and overlying bottom deposits, or a combination thereof, which defines the original location and orientation of the bulk of a historic shipwreck's material remains. These deposits represent non-random distribution patterns that include personal effects, cargo, and ship's supplies reflecting human behavior in different shipboard activity areas.

Raw Materials - commodities that are in a natural state save for marks from cutting, breaking, or separating for transport. Such items are of historical interest due to tool marks, use and wear marks or patterns, size breakdown for transport, metal or mineral composition.

Secondary Archaeological Deposit - scattered artifacts derived from the break-up of a vessel following its sinking and progressive break-up of the hull under prevailing local hydrological conditions. The contextual associations within these derived artifacts are largely determined by oceanographic variables (wind, waves and currents) within a short time following the sinking of the vessel.

Similar Artifacts - artifacts made from the same materials for the same functional purpose. These artifacts may vary slightly in composition, weight, size, stamps and marks, wear patterns, color, design, etc. These may often be items made by handcraft.

Submerged Cultural Resource (SCR) - A historic resource or historic property that is under water.

Tertiary Archaeological Deposit - artifacts transported from their original position on the sea floor through continual re-deposition within the regular erosion sedimentation cycle characteristic of shallow off-shore coastal processes.

III. MANAGEMENT OF HISTORIC SANCTUARY RESOURCES

NOAA and the State of Florida agree that the comprehensive management plan for the Florida Keys National Marine Sanctuary should have uniform policies and regulations for management of resources throughout the Sanctuary which are consistent with the provi-

sions of the NMSA, the ASA, and the ASA Guidelines. The Sanctuary will be managed to protect natural and historical resources, including abandoned shipwrecks, for present and future generations. The management will also facilitate access for research (NMSA), education (NMSA), commercial salvage (ASA) and recreational enjoyment (NMSA) in a manner which is consistent with the primary objective of resource protection while recognizing that the discovery and protection of historical submerged cultural resources may require their excavation and removal.

The management plan for the Sanctuary does not terminate valid federal admiralty rights to certain shipwrecks that were in existence prior to the designation of the Sanctuary by Congress on November 16, 1990, pursuant to valid orders of Federal Admiralty Courts.

A. Inventory and Documentation of Historical Shipwrecks

1. The survey and inventory of SCRs, including historical shipwrecks, is necessary for proper SCR management. NOAA and the State of Florida will seek all appropriate public and private means of continuing to survey the Sanctuary and prepare a shipwreck inventory of all known shipwrecks and other SCR sites within the Sanctuary.
2. Information obtained from literary research, survey and research permit reports, site maps and photographs shall be used to supplement the shipwreck inventory. The shipwreck inventory will provide a database to aid resource managers in proper management of historical resources within the Sanctuary. All shipwrecks shall also be reported to the Florida Site File at the Florida Division of Historical Resources. The shipwreck inventory shall, at a minimum, contain the following information:
 - a. Popular name, and when known, the vessel name, if different;
 - b. Vessel size, type, and age;
 - c. When known, the wreck date and function at the time of the wreck incident;
 - d. Location, including whether it is in a zoned area, or areas of coral, seagrass or other natural/historical significance;
 - e. The integrity and degree of dispersal of the shipwreck;
 - f. Whether it is buried or encrusted in coralline formations;
 - g. Whether it is listed in or eligible for listing in the National

Register of Historic Places, or is eligible for listing, or is a National Historic Landmark;

- h. The site form recorded in the Florida Site File; and
 - i. Whether the site is State owned, or subject to pre-existing rights of access under admiralty law.
- 3. Any newly discovered shipwrecks or any new information pertaining to listed shipwrecks brought to the attention of NOAA or the State of Florida shall immediately be included in the shipwreck inventory, and where appropriate, the Florida Site File. NOAA and the State of Florida shall annually review the progress of the shipwreck inventory and shall make recommendations for the following year's work.
- 4. All information relating to each vessel including field notes, historical information, photographs, videotapes, site maps, drawings, inventory forms, and reports shall be maintained together and be deposited, when possible, in both the NOAA central repository and the Florida Site File. All such documentation shall be available to the public for interpretive and educational purposes.

B. Resource Protection

NOAA and the State of Florida agree that in order to protect natural and historic sanctuary resources, the Sanctuary regulations will prohibit the unauthorized removal or injury of historical and natural resources. Applications for permits involving activities which may injure or adversely affect historical resources will be reviewed by the State Historic Preservation Office, and NOAA. Permits which strictly adhere to the Sanctuary regulations, and this SCR Agreement are also deemed to be in compliance with section 106 of the National Historic Preservation Act, and do not require further approval of the Advisory Council on Historic Preservation. Permits which are outside of the scope of this SCR Agreement, in whole or in part, are subject to section 106 review.

C. Public Access

- 1. NOAA and the State of Florida agree to allow public access to historic resources which does not harm or adversely affect the natural or historic qualities of these resources. Sport diver access to publicly-owned shipwrecks having recreational value may be facilitated through the placement of marker buoys and anchor moorings and through the distribution of information at dive shops and marinas.
- 2. NOAA and the State of Florida agree that generally, any person should be able to freely and without a permit dive on, photograph, or otherwise use and enjoy

publicly-owned shipwrecks, including historical shipwrecks and shipwrecks whose historical significance has not yet been evaluated, provided that the use or activity does not involve disturbing or removing parts or portions of the shipwreck, its immediate environment, coral, seagrass and other natural resources.

3. NOAA and the State of Florida agree that there may be instances in which access to certain shipwrecks should be limited. Decisions to limit, monitor, or prohibit public access to shipwrecks shall be made on a case by case basis, be practical and fairly administered. NOAA and the State of Florida may seek comments from various interested groups prior to imposing restrictions on public access to shipwrecks. Generally, public access to shipwrecks shall be regulated, including zoning, when:
 - a. A shipwreck is extremely fragile and in danger of collapsing;
 - b. A shipwreck is suffering extensive deterioration or attrition due to prior unregulated access;
 - c. A permittee who is recovering a shipwreck under a valid permit requests that access be regulated during the term of the permit;
 - d. A shipwreck site presents an unacceptable risk to human safety and/or the visitor does not assume full responsibility for his or her safety; or
 - e. A shipwreck is subject to sovereign immunity and the applicable Federal Government agency or foreign nation provides instructions on regulating public access to the shipwreck. In the absence of specific instructions from the applicable sovereign, under customary international law, access by any U.S. national to shipwrecks entitled to sovereign immunity is prohibited. When a sovereign grants permission, it generally limits access to named individuals for specified purposes. As a matter of policy, the U.S. Navy does not abandon its vessels and permission generally is not given to access, or salvage, sunken Navy vessels.
4. NOAA and the State of Florida agree that public access to historical resources removed from the Sanctuary shall be maintained through curation and display agreements consistent to the maximum extent practicable with 36 CFR Part 79. The Florida Division of Historical Resources has agreed to be an approved curation facility.

D. Education

1. NOAA and the State of Florida agree that in order to responsibly manage

historical resources in the Sanctuary, a public education program shall be developed to facilitate understanding of these resources, their significance in maritime history, and the importance of their preservation.

2. Public education will be facilitated through public workshops, field trips, and volunteer projects.
3. NOAA and the State of Florida shall work toward establishing a system of underwater parks and underwater shipwreck trails where public access shall be encouraged. Recovery shall be prohibited in these areas.
4. The volunteer coordinator will develop an educational program for public volunteers to participate in gathering historical information for the shipwreck inventory.
5. To the extent practicable, recovered artifacts may be placed in museums for public display and interpretation. Museums shall also develop interpretive programs that help illustrate the background and history of the recovered artifacts.

E. Permits

1. NOAA and the State of Florida agree that non-intrusive surveys of historical resources are encouraged but will not require a survey/inventory permit. However, no archaeological research/recovery permit will be granted unless and until the applicant has completed the survey/inventory process successfully or can otherwise demonstrate his or her professional abilities and that research/recovery is in the public interest.
2. Consistent with the policies of the National Marine Sanctuary Program and the Federal Archaeological Program, NOAA and the State of Florida prefer that certain SCRs are preserved in-situ while others should be recovered pursuant to research/recovery permits. Upon proper research and recovery, under the ASA there is also a public interest in the deaccession or transfer of certain SCRs consistent with this agreement and implementing guidelines. Because historic resources are an irreplaceable non-renewable resource, where public access to artifacts, examination, and historic research can be facilitated without removal, they should remain in the sanctuary for research, education and the viewing enjoyment of the public for present and future generations, unless removal is in the public interest as determined by the criteria prescribed in this agreement. For example, a public interest for removal may be present for artifacts imbedded in submerged land as such artifacts cannot be directly examined or physically displayed to the public without removal.

3. Requests for the archaeological recovery of historic shipwrecks and their associated artifacts shall be jointly reviewed and approved by NOAA and the State of Florida in accordance with this agreement and the permitting procedures found in the FKNMSPA implementing regulations, 15 CFR Part 929. Deaccession/transfer are for commercial salvage and have been determined to be special use permits and are therefore also subject to the requirements and conditions for special use permits found in 15 CFR § 929.166(d) if consensus between the State of Florida and NOAA on deaccession/transfer is not reached, then the State may, without a special use permit, exercise its rights of ownership of SCRs in State waters and independently determine how SCRs owned by the State shall be deaccessioned or transferred pursuant to current state law.
4. The proposed recovery activity must be in the public interest and should, at a minimum, further archaeological knowledge. For example, to facilitate research, education, public access and other management objectives for the Sanctuary, the ASA, and the ASA Guidelines. The decisions will be made on a case-by-case basis by weighing and balancing the values and uses a particular shipwreck may have, the potential benefits to be derived from the proposed recovery activity, and the potential adverse effects of the proposed recovery activity. Only those public and private sector recovery activities that are in the best interests of the public should be authorized. To help determine whether a proposed public or private sector activity is in the best interest of the public, in addition to the factors/criteria in the Sanctuary regulations and elsewhere in this Agreement, consistent with the ASA guidelines, NOAA and the State will also consider the following:
 - a. Is the SCR owned by the State; or is it subject to sovereign immunity or other sovereign interest, i.e., Florida, U.S., or Foreign government? What is the preference of the sovereign owner of the SCR as to recovery? What disposition will facilitate the greatest public access to the artifacts? Will the proposed recovery add to the pool of artifacts available to sovereign owner for public loan and display?
 - b. If the SCRs can be identified without excavation and recovery, what are the SCRs' current and potential value and uses? Is recovery consistent with those values and uses? Will it enhance those values and uses? If it can be determined what the SCRs are, will recovery irrevocably damage or destroy any of those values and uses?
 - c. Will the proposed recovery result in the acquisition of new historical information or verify historical documentation?
 - d. Is the SCR threatened? Is it being damaged or destroyed by natural processes (such as erosion), or by human activity (intentional or

- unintentional)? Is the threat imminent and unavoidable and will the area be restored to its original condition?
- e. Will recovery impede navigation?
 - f. If applicable, is the SCR listed in or eligible for inclusion in the National Register of Historic Places? Is it a National Historic Landmark?
 - g. Will the proposed recovery result in a nomination to the Secretary of Interior to list the SCR in the National Register or result in a recommendation for designation as a National Historic Landmark?
 - h. Will the area be restored to its original condition?
5. The permit applicant, shall employ a project archaeologist or anthropologist who must meet, at a minimum, the following qualifications to carry out the activity:
- a. Hold a graduate degree in anthropology or archaeology, or equivalent training and experience;
 - b. Completed at least 12 months of experience in research concerning archaeological resources of the pertinent period, meaning that applicants proposing to study historic shipwrecks should have one year of experience in historic shipwreck research, etc.;
 - c. Demonstrate the ability to carry out research to completion, as evidenced by timely completion of theses, research reports, or similar documents; and
 - d. Completed at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity being proposed.
6. The project archaeologist or anthropologist must supervise all permitted activities and participate in all recovery operations, assist permittee in the compilation of data collected relating to the site and the recovered artifacts in an acceptable form for the annual and final reports, ensure that all on site data is properly collected, assist in on site mapping of significant features such as articulated structures, ballast concentrations, cannon and anchor features, etc. This requirement shall not require the continuous physical presence of the project archaeologist or anthropologist at the recovery site.
7. Permit applications to recover historical resources shall, at a minimum, include the

following information:

- a. A research plan describing in detail specific research objectives;
- b. A statement of the project's research significance;
- c. A detailed operational plan including description of the proposed methods to be used for excavation, recovery, and storage of artifacts and related materials on site;
- d. An analysis of the extent and nature of potential environmental impacts to sanctuary resources;
- e. A plan for site restoration and remediation;
- f. A statement of compliance with the Federal Archaeological Program Executive Order 11593 and federal statutes cited therein, and implementing regulations and guidelines;
- g. A signed agreement with an appropriate conservation facility detailing a plan for the conservation of artifacts consistent with federal law (36 CFR Part 79);
- h. A signed agreement with a repository, i.e., museum, archaeological center, laboratory or storage facility managed by a university, college, museum, other educational or scientific institution, Federal, State or local government agency, to provide professional, systematic and accountable curatorial services on a long-term basis consistent with federal law (36 CFR Part 79). The Florida Department of State, Division of Historical Resources will provide professional, systematic and accountable curatorial services on a long-term basis if the permittee is unable to secure any other repository. Agreements shall, at a minimum, include:
 - 1) A statement that identifies who owns and has jurisdiction over the collection;
 - 2) A statement of work to be performed by the repository, including how the artifacts will be stored, assessed, preserved, maintained, exhibited, and conserved; and
 - 3) A statement of the responsibility of the permittee.
- i. A plan for the storage and public availability of records related to the

research project and the artifacts;

- j. A separate statement of the professional qualifications for each personnel member who will conduct the activities involved in the project, signed and certified by that personnel member; and
 - k. Any other information that may be determined necessary on a case-by-case basis.
- 8. The permittee shall submit a final report detailing the research plan, methodologies, field operations, and research findings.
 - 9. A permittee authorized to excavate and recover an historical shipwreck may be required as a condition of the permit to:
 - a. Make presentations on the results of the recovery activity and the archaeological findings in public forums;
 - b. Prepare scientific and non-technical, popular publications; and
 - c. Make artifacts and other materials recovered from the shipwreck available for future study, public interpretation and public exhibition.
 - 10. NOAA or the State of Florida may periodically monitor permitted recovery activities to ensure that they are in compliance with all terms and conditions of the permit.
 - 11. NOAA or State of Florida officials who monitor permitted activities shall have the authority to immediately suspend the permit if it appears the activity is not in compliance with the conditions and terms of permit. Once work is suspended, work may not resume until NOAA and the State have conducted a thorough review and notified the permittee of their findings. Notwithstanding the above, a permittee who has been the subject of such an emergency suspension will be entitled to notice and hearing in accordance with NOAA regulations and the Administrative Procedure Act.
 - 12. Any person applying for a permit must demonstrate their financial ability for the proposed activity. In cases where NOAA and the State are concerned about the financial ability to complete the project, a performance bond or other security to cover costs associated with the recovery, conservation and final report may be required in order to approve the permit. The terms of the performance bonds shall be deemed fulfilled when the recovery activity is completed in compliance with the permit, the recovered items are properly conserved and analyzed, and the final

report submitted pursuant to subparagraph (E)(8) is jointly reviewed and approved by NOAA and the State of Florida.

13. The permittee, at his or her expense, shall provide secure storage of artifacts. NOAA and State approval of the storage facility may include the waiver of the insurance requirements.

F. Survey/Inventory Permits

1. NOAA and the State of Florida agree that to adequately protect historical resources within the Sanctuary, it will be necessary to develop a detailed understanding of the number, nature, location, and historical significance of shipwrecks in the Sanctuary.
2. To assess the number, nature, location, and historical significance of shipwrecks in the Sanctuary, non-intrusive surveys of historical resources are encouraged.
3. Applications to conduct surveys shall contain a description of the methodology to be employed. Preference shall be given to applications for survey/inventory permits that propose employing superior scientific methodologies and techniques, i.e., the use of magnetometers, side-scan sonar, subbottom profilers, and remotely operated vehicles, if appropriate for the area being surveyed. No more than one permit will be issued for a particular site for a particular period of time. The duration of permits should not exceed five years.
4. Authorized survey activities shall be conducted according to the following minimum requirements:
 - a. Surveys should be conducted systematically, with sufficiently close lane spacing to provide accurate, detailed coverage of the survey area;
 - b. Surveys should be conducted by a team that includes, at a minimum, persons trained or experienced in the conduct of marine surveys, the use of remote sensing equipment, and the examination and analysis of remote sensing readings for the purpose of identifying shipwrecks.
 - c. The location of a shipwreck should be recorded on a map using a standard coordinate system.
5. All SCRs located during a remote-sensing survey should be ground-truthed through seabed inspection, either by remotely operated vehicle or divers. Shipwrecks should be examined to determine the nature, extent and integrity of the wrecked vessel, surviving cargo, and associated scattered wreckage, and to locate

any visible human remains.

6. SCRs shall be examined in a non-destructive and non-disturbing manner. Determinations of a shipwreck's type, age, condition and, when possible, specific identity shall be made without test excavations or removal of artifacts or other materials.
7. When test excavations are necessary or artifacts or other materials must be removed, i.e., if the shipwreck is embedded or encrusted, the amount to be excavated or removed shall be as limited as possible to make evaluations, and be done using archaeological methods. Any artifacts or other materials recovered from historic shipwrecks shall be conserved by a nautical conservator.
8. All tapes, equipment readings, field notebooks, and logs generated during surveys shall be collated and archivally saved for future study.
9. Survey reports shall be prepared and published that describe the areas surveyed, survey methods used and the results of the survey. Copies of the reports shall be submitted to NOAA and the State of Florida.

G. Research/Recovery Permits

1. NOAA and the State of Florida agree that archaeological research or recovery involving excavation and removal of SCRs, or other intrusive activities is prohibited, except as authorized and strictly regulated by a research/recovery permit under this section or a deaccession/transfer permit issued pursuant to section H.
2. Based upon the need to protect natural and historical resources, and the potential use of the resource for research, education, recreation, or other public or private uses, use of historic resources in situ is preferred if no public interest for their removal exists as determined by the criteria prescribed in this agreement.
3. Recovery of historical resources may be appropriate if NOAA and the State of Florida determine that such activity is in the public interest and that the removal of historical resources may be necessary or appropriate to protect the resource, preserve historical information and/or fulfill other NMSA purposes, such as land based public access, research, education, and appreciation.
4. Recovery of historical resources will only be permitted in conjunction with a plan of research which preserves the historic information for public use.
5. NOAA and the State of Florida will jointly determine whether intrusive

research/recovery should be permitted on a case by case basis, weighing and balancing the values and uses a particular shipwreck may have, the potential public benefits to be derived from the proposed recovery, and the potential adverse effects to be caused by the proposed activity. Only those recovery activities for which a public interest is demonstrated shall be authorized.

6. To determine whether a proposed recovery activity is in the public interest, NOAA and the State of Florida shall, at a minimum, consider the following in addition to those previously enumerated public interest criteria:
 - a. The shipwreck's current and potential future values and uses and whether the proposed recovery is consistent with or enhances such values and uses;
 - b. The archaeological or historical significance of the shipwreck site;
 - c. The structural integrity of the shipwreck site and the potential adverse effects that may result from the proposed recovery; and
 - d. The environmental impacts of the proposed recovery activity.
7. For any research/recovery activity proposed within the Sanctuary, the artifacts and material remains that are recovered from the shipwreck site shall remain public resources of the sovereign owner, unless transfer of title has occurred pursuant to a deaccession/transfer permit issued by the sovereign owner as described in section H.

H. Deaccession/Transfer Permits

1. NOAA and the State of Florida agree that based upon the potential use of historical resources for research, maintaining recovered non-deaccessed resources together at one location as a collection is preferred. However, agreements for the curation and display of recovered non-deaccessed historical resources may provide for distribution of artifacts in order to fulfill resource protection, research, education or other purposes of the Sanctuary.
2. The following types of artifacts are historical resources and shall remain Sanctuary resources and shall not be unconditionally transferred to the private sector, unless the NOAA Marine Archaeologist and the State Archaeologist (NOAA/State Archaeologists) determine that the artifact is no longer of historical interest pursuant to paragraphs 11-13:
 - a. All portions of shipwrecks, which are of archaeological interest and at least 50 years old, including, but not limited to, armaments, apparel, tackle, and

cargo;

- b. Any material remains, if they are at least 50 years old and reflect past human life or activities, or have social, cultural, archaeological, aesthetic, or religious significance with regard to past human life or activities, found within or as part of a shipwreck, in the debris field of a shipwreck, or in an historical context. This includes, but is not limited to, any portion or piece of crafted items, modified raw materials, natural state raw materials, food products, and paleontological remains.
3. NOAA and the State of Florida agree that there may be instances in which certain historical resources are no longer of historical interest and, therefore, are available for unconditional transfer into private ownership.
4. NOAA and the State of Florida agree that if the NOAA/State Archaeologists determine that an object is not of historical interest it will be available to the party that recovered it pursuant to a valid research/recovery permit.
5. NOAA and the State of Florida agree that if certain artifacts or portions of a collection of artifacts become available for transfer to the private sector, all of the artifacts shall have first been conserved, analyzed, interpreted in a published report, and in each instance, representative samples retained for research, education, or public display.
6. NOAA and the State of Florida agree that transfer of title to artifacts transferable to a permittee will occur only after field operations and laboratory analysis for the preceding field season are completed, and the final report for that field season is approved by the NOAA/State Archaeologists. Consistent with the Secretary of State's directive, such decisions by NOAA and the State will be made within 60 days, or the State will make a decision independent of NOAA pursuant to condition 14 below.
7. NOAA and the State of Florida agree that to the extent possible, the items transferred should be preserved and maintained as an intact collection and should be made available for future study, public interpretation and exhibition.
8. NOAA and the State of Florida agree that as a condition of transfer of ownership of artifacts, information on the recovery activity and the archaeological findings shall be disseminated by the permittee to the scientific community and the public.
9. NOAA and the State of Florida agree that after an artifact has been conserved, analyzed and interpreted in a published report, the NOAA/State Archaeologists may determine that the significant historical information has been preserved and

that the artifact is no longer necessary for providing additional significant scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics. In such an instance, the artifact may become available for transfer to the private sector.

10. NOAA and the State of Florida agree that the following items if determined by the NOAA/State Archaeologists to be randomly deposited and found outside of a shipwreck, shipwreck debris field, or historical association and determined by the NOAA/State Archaeologists to have no future potential for indicating any hither to unknown or indefinite historical resource, shall not be of historical interest and may be transferred to the private party that recovered it under the terms of a valid permit. Such items include:
 - a. unworked minerals and rocks;
 - b. modified raw materials (ingots, bullion, pigs);
 - c. coins, gems, projectiles.

To determine whether the artifact may be available for transfer to the private sector, the NOAA/State Archaeologists shall consider the factors listed in paragraphs 11-13.

11. The following criteria shall be applied to determine whether an artifact is of historical significance:
 - a. Items with no archaeological association are usually of low historical interest;
 - b. An intact collection is usually of higher historical value than unrelated artifacts;
 - c. Identical artifacts are usually of low historical interest when a representative sample is retained in public ownership;
 - d. Similar artifacts are usually of low historical interest when a sample representing all types is retained in public ownership;
 - e. Items of unmodified raw material are usually of low historical interest when a sample representing the full range of variation is retained in public ownership;
 - f. Items of modified raw material are usually of moderate historical interest;

- g. Items that are rare or unique are of high historical interest;
 - h. Items that have future potential for archaeological, historical, cultural, or scientific research are of high historical interest.
- 12. The NOAA/State Archaeologists shall determine the final disposition of artifacts as follows:
 - a. Certain artifacts of high historical interest, or overriding cultural or scientific importance are not available for transfer of title;
 - b. All artifacts are available for loan or other uses short of ownership as means of generating revenue provided the permit conditions have been satisfied and artifacts are properly cared for;
 - c. Items that are recovered illegally, or in violation of a permit or condition thereof are not available for transfer of title;
 - d. Artifacts of low historical interest are available for transfer of title to the permittee in accordance with the provisions set forth in this agreement for the disposition of recovered SCRs.
- 13. The decision to transfer title is to be made by the NOAA/Florida Archaeologists pursuant to the following criteria:
 - a. Items of low historical interest regardless of age may be transferred;
 - b. Items greater than fifty (50) years of age and having moderate historical interest may be transferred provided that no such artifacts shall be conveyed until all conditions of a research/recovery/transfer permit have been satisfied and representative samples have been retained;
 - c. Items of high historical interest shall not be transferred.
 - d. If the guidelines which are subsequently developed and recommended to State, NOAA, and the Advisory Council on Historic Preservation are determined by the State to be inadequate to sufficiently address the State's interest in the management of State SCRs, then it is understood by the Parties that no sanctuary Special Use Permit will be required, and the State will, consistent with condition H.14 and independent of NOAA, dispose of State SCRs pursuant to current State law.

14. If NOAA and the State are unable to reach consensus on the deaccession/transfe pursuant to a Special Use permit under this Agreement, then the State may, wit out a Special Use Permit, exercise its rights of ownership of SCRs in State waters and independently determine how SCRs owned by the State shall be deaccessioned or transferred pursuant to current state law. The Secretary of State does not by this Agreement divest the State of its ownership and the rights attendant thereto of SCRs located in State waters and accordingly retains the authority to dispose of SCRs recovered under this Agreement.

IV. MODIFICATION


This Agreement may be modified by agreement of the signatories. All modifications must be in writing and executed by the signatories in the same manner as this agreement.

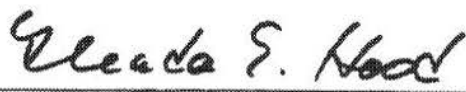
V. OTHER PROVISIONS

1. Upon request by the public the Council will review specific NOAA management activities with respect to compliance with federal historic preservation law. Upon such review NOAA is required to review such specified activities and respond to the Council. The Council will report its findings to the public, to the requestor, and to the State of Florida.
2. Every two (2) years, NOAA shall provide to the Council a brief report on the implementation of this agreement. The report will summarize activities at the Sanctuary, describe the condition of known historic properties, including any changes since the last report, and discuss any proposed changes in procedures to improve implementation of this agreement. The Council will supply NOAA's report and its own findings to the State of Florida.
3. In the event that this programmatic agreement is terminated, NOAA is not relieved of its responsibilities to comply with parts 36 CFR Parts 800.4 - 800.6 with regard to federal undertakings within the Sanctuary.
4. NOAA's and the State's responsibilities under this agreement are subject to the availability of appropriated funds.

VI. PERIOD

This Agreement shall be effective for five years. NOAA will re-propose the SCR Agreement and the corresponding regulations in their entirety. The State will have the opportunity to review the management plan and regulations, in their entirety, and indicate if any or all of its terms are unacceptable in which case the unacceptable terms shall not take effect in state waters.

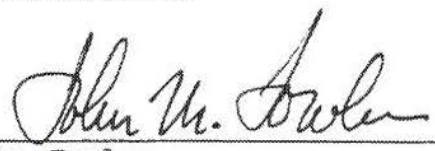

Conrad C. Lautenbacher, Jr.
Under Secretary for Oceans
and Atmosphere


Glenda E. Hood
Secretary of State

DATE: 6/24/03

DATE: 6-24-03

ACCEPTED AND APPROVED FOR THE
ADVISORY COUNCIL ON HISTORIC
PRESERVATION


John Fowler
Director

DATE: 6/20/03

MODIFICATION NO. 001

TO

MOA-2003-103

PROGRAMMATIC AGREEMENT

AMONG

**THE NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION**

AND

THE STATE OF FLORIDA

AND

ADVISORY COUNCIL ON HISTORIC PRESERVATION

FOR

HISTORICAL RESOURCE MANAGEMENT

IN THE

FLORIDA KEYS NATIONAL MARINE SANCTUARY

NOS Agreement Code: MOA-2003-103 (Modification # 001)/1109

The purpose of this Modification is to correct the typographical and grammatical errors in the original Agreement, MOA-2003-103. Therefore, in accordance with **Section IV. MODIFICATION**, the Parties hereby agree to modify the underlying Agreement, MOA-2003-103, as follows:

1. Preamble, paragraph 3, replace the final sentence of this paragraph with the following:

The Advisory Council on Historic Preservation (Council) agrees that this is a Programmatic Agreement under sections 106 and 110 of the National Historic Preservation Act and its implementing regulations.

2. Section I. **REFERENCES AND AUTHORITIES**, paragraph 2, replace the final sentence of this paragraph with the following:

The State of Florida enters this Agreement pursuant to Chapter 267 of the Florida Statutes, in which title to abandoned historic resources on state-owned lands or state-owned sovereignty submerged lands is vested in the Division of Historical Resources of the Florida Department of State, which is charged with the statutory responsibility of locating, acquiring, protecting, preserving, operating, and interpreting historic resources, in order to foster an appreciation of Florida history and culture.

3. Section III. **MANAGEMENT OF HISTORIC SANCTUARY RESOURCES**, subsection E. **Permits**, is revised as follows:

- a. Replace paragraph 3 with the following:

3. Requests for the archaeological recovery of historic shipwrecks and their associated artifacts shall be jointly reviewed and approved by NOAA and the State of Florida in accordance with this Agreement and the permitting procedures found in the FKNMSPA implementing regulations, 15 CFR Part 929. Deaccession/transfer are for commercial salvage and have been determined to be special use permits and are therefore also subject to the requirements and conditions for special use permits found in 15 CFR § 929.166(d). If a consensus between the State of Florida and NOAA on deaccession/transfer is not reached, then the State may, without a special use permit, exercise its rights of ownership of SCRs in State waters and independently determine how SCRs owned by the State shall be deaccessioned or transferred pursuant to current state law.

- b. Replace paragraph 4 with the following:

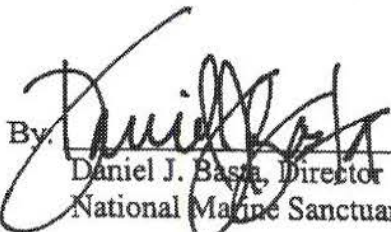
4. The proposed recovery activity must be in the public interest and should,

at a minimum, further archaeological knowledge. For example, it should facilitate research, education, public access, or other management objectives for the Sanctuary, the ASA, and the ASA Guidelines. The decision will be made on a case-by-case basis by weighing and balancing the values and uses a particular shipwreck may have, the potential benefits to be derived from the proposed recovery activity, and the potential adverse effects of the proposed recovery activity. Only those public and private sector recovery activities that are in the best interests of the public should be authorized. To help determine whether a proposed public or private sector activity is in the best interest of the public, in addition to the factors/criteria in the Sanctuary regulations and elsewhere in this Agreement, consistent with the ASA Guidelines, NOAA and the State will also consider the following:

4. The other terms and conditions of the underlying Agreement, except as hereby modified, remain in full force and effect.
5. This Modification will become effective after being signed by all Parties.


APPROVALS

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION

By: 
Daniel J. Basta, Director
National Marine Sanctuary Program

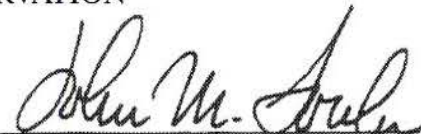
Date: 1/9/04

ACCEPTED AND APPROVED FOR THE
STATE OF FLORIDA
DEPARTMENT OF STATE

By: 
Glenda E. Hood
Secretary of State

Date: 3-9-04

ACCEPTED AND APPROVED FOR THE
ADVISORY COUNCIL ON HISTORIC
PRESERVATION

By: 
John Fowler
Executive Director

Date: 2/11/04